



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1218**

**[Document Number AMS-FV-14-0089]**

**Blueberry Promotion, Research and Information Order; Expanding the Membership of the U.S. Highbush Blueberry Council and Other Changes**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on expanding the membership of the U.S. Highbush Blueberry Council (Council) under the Blueberry Promotion, Research and Information Order (Order). The Council administers the Order with oversight by the U.S. Department of Agriculture (USDA). This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. This proposal would also add eligibility requirements for the public member, clarify the Council's nomination procedures and its ability to serve the diversity of the industry, and increase the number of members needed for a quorum. This proposal also invites comments on prescribing late

payment and interest charges for past due assessments. These changes would help facilitate program administration. All of these actions were unanimously recommended by the Council.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632-8848; facsimile (202) 205-2800; or electronic mail: [Maureen.Pello@ams.usda.gov](mailto:Maureen.Pello@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

**Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

**Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct

effects on Tribal governments and would not have significant Tribal implications.

#### **Executive Order 12988**

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or

conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

## **Background**

This proposal invites comments on expanding the membership of the Council under the Order. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. This proposal would also add eligibility requirements for the public member, clarify the Council's nomination procedures and its ability to serve the diversity of the industry, and increase the number of members needed for a quorum. This proposal also invites comments on prescribing late payment and interest charges on past due assessments. These changes would help facilitate program administration. All of these actions were

unanimously recommended by the Council at its meeting on October 3, 2014.

### **Expanding the Council's Membership**

Section 1218.40(a) of the Order currently specifies that the Council be composed of no more than 16 members and alternates appointed by the Secretary of Agriculture (Secretary). Ten of the 16 members and alternates are producers. One producer member and alternate are from each of the following regions within the United States: Region #1 Western Region; Region #2 Midwest Region; Region #3 Northeast Region; and Region #4 Southern Region. One producer member and alternate are from each of the top six blueberry producing states, based upon the average of the total tons produced over the previous three years. Currently, these states include Michigan, Oregon, Washington, Georgia, New Jersey, and California. Average tonnage is based upon production and assessment figures generated by the Council.

Of the remaining six Council members and alternates, three members and alternates are importers. One member and alternate must be an exporter, defined in section 1218.40 as a blueberry producer currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average (currently Chile). One member and alternate

must be a first handler, defined in section 1218.40 as a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries. Finally, one member and alternate must represent the public.

Section 1218.40(b) of the Order specifies that, at least once every five years, the Council will review the geographical distribution of the production of blueberries in the United States and the quantity of imports. The review is conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that its membership be altered to reflect changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

#### **Council Recommendation**

##### ***Adding Two State Producer Positions***

The Council met on October 3, 2014, and reviewed domestic production and assessment data for the pasts three years (2011-2013). This data for the top blueberry producing states is summarized in Table 1 below.

**Table 1. Production<sup>1</sup> and Assessment<sup>2</sup> Figures from 2011-2013**

State	2011		2012		2013		3-year average	
	Tons	Assessments Paid	Tons	Assessments Paid	Tons	Assessments Paid	Tons	Assessments Paid
Michigan	36,000	\$434,775	43,500	\$528,782	57,500	\$668,678	45,500	\$544,075
Oregon	32,750	\$363,726	36,000	\$433,326	44,750	\$517,579	37,833	\$438,210
Washington	30,500	\$319,635	35,000	\$334,242	40,800	\$361,595	35,433	\$338,491
Georgia	32,500	\$343,694	38,500	\$347,666	34,000	\$359,681	35,000	\$350,347
New Jersey	31,000	\$321,123	27,000	\$285,502	25,080	\$288,578	27,693	\$298,401
California	21,050	\$286,696	20,450	\$301,212	25,700	\$366,494	22,400	\$318,134
North Carolina	18,500	\$189,061	20,250	\$198,090	21,200	\$190,904	19,983	\$192,685
Florida	11,700	\$131,538	9,050	\$88,246	10,750	\$124,576	10,500	\$114,787
Mississippi	5,250	\$27,096	4,500	\$28,610	3,650	\$17,566	4,467	\$24,424
Indiana	800	\$3,007	750	\$3,160	1,600	\$7,751	1,050	\$4,639

As shown in Table 1, Michigan, Oregon, Washington, Georgia, New Jersey, California, North Carolina, and Florida, respectively, were the top eight highbush blueberry producing states based on the 3-year average of both production and assessments paid from 2011-2013. Mississippi and Indiana, respectively, were the ninth and tenth highest blueberry producing states from 2011-2013. Blueberry production in Florida, the smallest producer of the top eight producing states, was more than double that of Mississippi.

Since the Council's inception in 2001 and continuing until 2006, there were five state positions on the Council; producers from Michigan, Oregon, Georgia, New Jersey, and North Carolina held those five positions. In 2006, a sixth state position was added to the Council, with the State of Washington earning a

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1 Noncitrus Fruits and Nuts 2013 Summary, July 2014, USDA, National Agricultural Statistics Service, p. 34.  
2 Council assessment records 2011-2013.



seat (71 FR 44553; August 7, 2006). Production shifted in the coming years, and by 2014, California became the sixth top blueberry producing state and earned a position on the Council, with its 3-year average production surpassing that of North Carolina.

After reviewing state production data, the Council recommended revising its membership so that one producer member and alternate from each of the top eight producing blueberry states have seats on the Council, based upon the average of the total tons produced over the previous 3 years. Thus, the number of state positions on the Council would be increased from six to eight. Based upon recent production figures, this would allow North Carolina and Florida to each have a state member and alternate seat on the Council. Section 1218.40(a)(2) would be revised accordingly.

#### ***Adding One Importer and One Exporter Position***

The Council also reviewed import data and compared it to domestic data. Table 2 below shows the domestic (U.S.) production figures and quantity of imports from 2011-2013 as well as assessments paid for domestic and imported blueberries for those years. The table also shows the 3-year average of domestic production, imports and assessments paid for 2011-2013.

**Table 2. U.S.<sup>3</sup> and Import<sup>4</sup> Quantities and Assessment<sup>5</sup> Data from 2011-2013**

<b>Year</b>	<b>Domestic (U.S.) Assessments</b>	<b>Import Assessments</b>	<b>U.S. Crop (tons)</b>	<b>Imports (tons)</b>
<b>2011</b>	\$2,151,682	\$1,525,936	221,600	124,549
<b>2012</b>	\$2,434,646	\$1,601,966	236,700	132,133
<b>2013</b>	\$2,577,953	\$1,795,164	265,600	151,005
<b>3-Year Average</b>	\$2,387,177	\$1,641,022	241,303	135,896
<b>Percent of Total</b>	59 percent	41 percent	64 percent	36 percent

As shown in Table 2, the quantity of imported blueberries as well as assessments paid by importers has increased from 2011-2013. Based upon a 3-year average of total assessments paid under the program, domestic blueberries account for 59 percent of assessments paid and imports account for 41 percent of assessments paid. Additionally, based on a 3-year average of the total tonnage covered under the program, domestic production accounts for 64 percent of the tonnage and imports account for 36 percent of the tonnage.

The Council also reviewed import data by country. Table 3 below shows the quantity of imports by country from 2011-2013 as well as the 3-year average.

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3 Noncitrus Fruits and Nuts, p. 9.

4 U.S. Customs and Border Protection data 2011-2013.

5 Council financial audit records 2011-2013.

**Table 3. Quantity of Blueberries from Foreign Production Areas 2011-2013<sup>6</sup>**

Foreign Blueberry Production Areas Shipping into the United States	Quantity (tons)			
	2011	2012	2013	3-Year Average
Chile	76,889	69,754	84,673	77,105
Canada	30,374	70,767	48,149	49,763
Argentina	9,001	14,830	13,813	12,548

As shown in Table 3, Chile and Canada, respectively, were the top two foreign production areas shipping blueberries into the United States from 2011-2013. Argentina has been the third top foreign production area shipping blueberries into the United States, although the quantity of Argentinian imports is much lower than the quantity of blueberries from Chile and Canada.

Regarding membership on the Council, representatives from Canada were the exporter member and alternate from the time of the Council's inception and continuing through 2009. Since 2010, representatives from Chile have been the exporter member and alternate on the Council.

Upon reviewing import data, the Council recommended adding one importer member and one alternate to its membership. This would increase the number of importer positions from three to four. The Council also recommended adding one exporter member and one alternate to its membership to represent foreign producers currently shipping blueberries into the United States from the second largest foreign blueberry production area, based

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<sup>6</sup> Customs data 2011-2013.

on a 3-year average. This would increase the number of exporter positions from one to two, allowing exporters from both Chile and Canada to be represented on the Council. Section 1218.40(a) of the Order is proposed to be amended accordingly.

Thus, the number of Council members would increase from 16 to 20. Of the 20 members, 12 would be domestic producers, 4 would be importers, 2 would be exporters, and 1 each would be a handler and public member. Of the 18 Council members representing domestic producers, importers and exporters, 66.7 percent would represent the domestic industry and 33.3 percent of the Council would represent imports or foreign production. This would realign the Council's membership to better reflect the geographic distribution of domestic and imported blueberries.

## **Other Changes**

### ***Public Member Eligibility***

The Council reviewed other Order provisions regarding its membership and operations. The Council recommended revising paragraph (a)(6) of section 1218.40 to clarify eligibility requirements for the public member and alternate member positions. Specifically, the Council recommended that the public member and alternate not be a blueberry producer,

handler, importer, exporter or have a financial interest in the production, sales, marketing or distribution of blueberries.

### ***Diversity***

The Council also recommended adding language to the Order to clarify its ability to serve the diversity of the industry. The Council recommended adding a new paragraph (c) to section 1218.40 to specify that, when the industry makes recommendations for nominees to serve on the Council, it should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Council take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

### ***Nominations and Appointments***

The Council recommended minor revisions to section 1218.41 of the Order regarding nominations and appointments. The procedures to nominate state and regional producers, as well as importers, exporters, first handlers, and public members would not change. The section would merely be revised to add clarity regarding the process for nominating members in states with and without a state blueberry commission or marketing order.

The Council also recommended adding language to section 1218.41 to expand the number of nominees submitted to the Secretary for consideration. Paragraph (a) of section 1218.41 currently provides that, when a state has a blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees must be recommended to the Secretary for each member and each alternate position. The Council recommended that other qualified persons who are interested in serving in the respective state positions but are not nominated by their State marketing order or commission be designated by the State organization and/or Council as additional nominees for consideration by the Secretary. Section 1218.41(a) would be revised accordingly.

Likewise, paragraph (d) of section 1218.41 currently provides that nominations for the importer, exporter, first handler, and public member positions be made by the Council. Two nominees for each member and each alternate position are submitted to the Secretary for consideration. The Council recommended that other qualified persons who are interested in serving in these positions but are not recommended by the Council be designated by the Council as additional nominees for consideration by the Secretary. The current paragraph (d) in

section 1218.41 would be modified accordingly and would become paragraph (c).

The Council also recommended adding a new paragraph (d) to section 1218.41 to specify that producer, handler and importer nominees must be in compliance with the Order's provisions regarding the payment of assessments and filing of reports. This would help ensure that only persons in compliance with the Order's obligations serve on the Council. Further, this section would clarify that producer and importer nominees must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually. This would bring the Order in line with how the program has been administered since its inception. Section 1218.41 is proposed to be revised accordingly.

### ***Council Procedures***

The Council recommended revisions to section 1218.45 regarding procedures. First, the Council recommended increasing the number of members needed for a quorum. Paragraph (a) of section 1218.45 currently specifies that nine members are needed for a quorum, which is a majority of the current 16-member Council. Increasing the number of Council members to 20 warrants increasing the number members needed for a quorum to 11, which would be a majority of the proposed 20-member Council.

The Council also recommended adding flexibility to its procedures so that members participating in Council meetings may cast votes on issues either in person or by electronic or other means as deemed appropriate. Specifically, a new paragraph (f) would be added to section 1218.45 to specify that all votes at meetings of the Council and committees may be cast in person or by electronic voting or other means as the Council and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes.

#### ***Past Due Assessments***

The Order specifies that the funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments and from other funds available to the Council. First handlers are responsible for collecting and submitting reports and producer assessments to the Council. Handlers must also maintain records necessary to verify their reports. Importers are responsible for paying assessments to the Council on highbush blueberries imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and



importers of 100 percent organic blueberries are exempt from the payment of assessments.

Section 1218.52(e) of the Order specifies that all assessment payments and reports must be submitted to the office of the Council. Assessments on imported blueberries are collected by Customs prior to entry into the United States. Assessments on domestic blueberries for a crop year must be received by the Council no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the Council, the total amount for which any such handler is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest must be prescribed in regulations issued by the Secretary.

Assessment funds are used for research and promotion activities that are intended to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time may reap the benefits of Council programs at the expense of others. In addition, they may utilize funds for their own use that should otherwise be paid to the Council to finance Council programs.

The Council recommended prescribing rates of late payment and interest charges for past due assessments in the Order's regulations. A late payment charge would be imposed upon handlers who fail to pay their assessments to the Council within 30 calendar days of the date when assessments are due. This one-time late payment charge would be 5 percent of the assessments due before interest charges have accrued.

Additionally, interest at a rate of 1 percent per month on the outstanding balance, including any late payment and accrued interest, would be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest would continue to accrue monthly until the outstanding balance is paid to the Council.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for provisions implementing the blueberry Order, and a new section 1218.520 would be added to Subpart C. Late payment charges and interest on past due assessments are not applicable for assessments on imported blueberries because the assessments are collected by Customs at the time of entry.

## **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7 million.

There are approximately 2,000 domestic producers, 80 first handlers and 200 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2013, \$715,958,000<sup>7</sup>, by the number of producers (2,000) yields an average annual producer revenue estimate of \$357,979. It is estimated that in 2013, about 60 percent of the first handlers shipped under \$7 million worth of highbush blueberries. Based on 2013 Customs data, it is estimated that almost 90 percent of the importers shipped under \$7 million worth of highbush

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<sup>7</sup> Noncitrus Fruits and Nuts 2014 Summary, July 2014, USDA, National Agricultural Statistics Service (NASS), p. 10.

blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities. We do not have information concerning the number of exporters and their size. Comments providing any information or data concerning exporters are requested.

Regarding value of the commodity, as mentioned above, based on 2013 NASS data, the value of the domestic highbush blueberry crop was about \$716 million. According to Customs data, the value of 2013 imports was about \$563 million.

This proposal invites comments on amending sections 1218.40, 1218.41 and 1218.45 of the Order regarding Council membership, nominations, and procedures, respectively. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. Authority for this action is provided in section 1218.40(b) of the Order and section 515(b) of the 1996 Act.

This proposal would also prescribe charges for past due assessments under the Order. A new section 1218.520 would be added to the Order specifying a one-time late payment charge of 5 percent of the assessments due and interest at a rate of 1 percent per month on the outstanding balance, including any late payment and accrued interest. This section would be included in a new Subpart C - Provisions for Implementing the Blueberry Promotion, Research and Information Order. Authority for this action is provided in section 1218.52(e) of the Order and section 517(e) of the 1996 Act.

Regarding the economic impact of the proposed rule on affected entities, expanding the Council membership and other proposed changes to the Order's membership provisions impose no additional costs on industry members. Eligible producers, importers and exporters interested in serving on the Council would have to complete a background questionnaire. Those requirements are addressed later in this proposal in the section titled ***Reporting and Recordkeeping Requirements***.

Prescribing charges for past due assessments imposes no additional costs on handlers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in compliance with the Order. For all entities who are delinquent in paying assessments, both large and small, the

charges would be applied the same. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments. Of the 2,000 producers, it is estimated that 1,860 producers and 180 importers produce or import over the 2,000-pound threshold and pay assessments under the program.

Regarding alternatives, the Council has been reviewing its membership and contemplating adding new members to reflect changes in the geographic distribution of blueberries for the past few years. As previously mentioned, in 2014, California became the sixth top blueberry producing state, which earned that state a member and alternate seat on the Council, while North Carolina lost its member and alternate seat. The Council formed a subcommittee that considered various options. One option was to eliminate the four regional producer positions and

allocate nine seats to producers representing the nine top producing blueberry states and one seat to a producer representing all other producing states (producer at-large). Another option considered was to increase the number of state producer positions from six to seven so that North Carolina would have a seat. The Council also considered maintaining the status quo. Ultimately the Council recommended revising the Order so that the top eight producing blueberry states would be represented on the Council.

The Council also considered adding two importers rather than one importer and one exporter to its membership. However, upon reviewing the import statistics, the Council concluded that it was important to have foreign producer representation from the top two countries shipping blueberries into the United States represented on the Council. Thus, the Council recommended adding one importer and one exporter member and alternates to the Council.

Regarding requirements for late assessments, the Council considered not prescribing rates for late charges and interest. However, the Council concluded that the rates should be codified along with the applicable date when charges would be applied so that the Order is clear on what is required. Additionally, the 1996 Act requires that the rates be prescribed by the Secretary.

### ***Reporting and Recordkeeping Requirements***

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. Eligible producers, importers, exporters, handlers, and public members interested in serving on the Council must complete a background questionnaire (Form AD-755) to verify their eligibility. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on blueberry producers, importers, exporters, handlers or public members.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities or citizen access to Government information and services, and for other purposes.



Regarding outreach efforts, this action was discussed by the Council at meetings in October 2012 and in 2013 and at executive and subcommittee meetings held in 2014. The Council met in October 2014 and unanimously made its recommendation. All of the Council's meetings are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of the proposed rule on small entities and we invite comments concerning the potential effects of this action.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

**List of Subjects in 7 CFR Part 1218**

Administrative practice and procedure, Advertising, Blueberry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1218 is proposed to be amended as follows:

**PART 1218 — BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1218 continues to read as follows:

**Authority:** 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. In § 1218.40, revise the introductory text in paragraph (a), revise paragraphs (a)(2), (a)(3), (a)(4), and (a)(6) and add a new paragraph (c) to read as follows:

§ 1218.40 Establishment and membership.

(a) Establishment of the U.S. Highbush Blueberry Council.

There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, composed of no more than 20 members and alternates, appointed by the Secretary from nominations as follows:

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(2) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(3) Four importers and alternates.

(4) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

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(6) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

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(c) Council's ability to serve the diversity of the industry. When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Council take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

3. Section 1218.41 is revised to read as follows:

**§ 1218.41 Nominations and appointments.**

(a) State representatives. (1) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be recommended to the Secretary for each member and each alternate position. Other eligible persons interested in serving in the respective state positions but not nominated by their State marketing order or commission will be designated by the State organization and/or Council as additional nominees for consideration by the Secretary.

(2) Nomination and election of state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(b) Regional representatives. Nomination and election of regional representatives will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated by the Council as additional nominees for consideration by the Secretary.

(c) Nominations for the importer, exporter, first handler, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) Producer, handler and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and

importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

4. In § 1218.45, revise paragraph (a), redesignate paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i) and (j), and add a new paragraph (f) to read as follows:

**§ 1218.45 Procedure.**

(a) At a Council meeting, it will be considered a quorum when a minimum of 11 members, or their alternates serving in their absence, are present.

\* \* \* \* \*

(f) All votes at meetings of the Council and committees may be cast in person or by electronic voting or other means as the Council and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes.

\* \* \* \* \*

5. Add Subpart C consisting of § 1218.520, to read as follows:

**Subpart C** – Provisions for Implementing the Blueberry Promotion, Research and Information Order.

**§ 1218.520 Late payment and interest charges for past due assessments.**

(1) A late payment charge will be imposed on any handler who fails to make timely remittance to the Council of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 5 percent of the assessments due before interest charges have accrued.

(2) In addition to the late payment charge, 1 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Council.

Dated: April 30, 2015.

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Rex A. Barnes

Associate Administrator

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